

**Letter of Findings: 01-20140640
Individual Income Tax
For the Year 2011**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual remained subject to Indiana's individual income tax filing requirement notwithstanding having acquired a Florida residence and conducting other activities in that state; Individual's continued ownership of an Indiana home along with his presence in this state more than 183 days during 2011 established that he had an Indiana income tax filing obligation.

ISSUES

I. Individual Income Tax - Indiana Residency.

Authority: IC § 6-3-2-1(a); IC § 6-3-1-12; IC § 6-8.1-5-1(c); Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); State Election Board v. Bayh, 521 N.E.2d 1313 (Ind. 1988); In the Matter of Evard, 333 N.E.2d 765 (Ind. 1975); Board of Medical Registration and Examination v. Turner, 168 N.E.2d 193 (Ind. 1960); Croop v. Walton, 157 N.E. 275 (Ind. 1927); Culbertson v. Bd. Of Comm'rs of Floyd County, 52 Ind. 361 (1876); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 3.1-1-22](#).

Taxpayer argues he is not subject to 2011 Indiana individual income tax because he was not a resident of Indiana during that year.

STATEMENT OF FACTS

The Indiana Department of Revenue ("Department") contacted the Taxpayer's representative in August 2014 asking Taxpayer to explain why he "was not required to file a 2011 Indiana income tax return." Taxpayer's representative responded September 2014 explaining that Taxpayer's residence was in Florida during 2011 and that there was no requirement that he file Indiana income tax returns.

The Department issued Taxpayer an assessment of Indiana income tax for the year 2011. Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. Individual Income Tax - Indiana Residency.

DISCUSSION

Taxpayer does not agree that he owes Indiana income tax on the ground that he was not a resident of Indiana during 2011. In addition, Taxpayer maintains that the income received constituted "non-business" income and should be sourced to where he maintains his residence.

All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and each taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138,

1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). In reviewing a taxpayer's argument, the Indiana Supreme Court has held, that when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes an income tax on "the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person" IC § 6-3-2-1(a). For income tax purposes, "The term 'resident' includes (a) any individual who was domiciled in this state during the taxable year, (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state" IC § 6-3-1-12.

To establish a domicile, a taxpayer "must be physically present at a place, and must have the simultaneous intent of establishing a home at that place." [45 IAC 3.1-1-22](#). For income tax purposes, "a person has only one domicile at a given time even though that person maintains more than one residence at that time." *Id.* Additionally, "[o]nce a domicile has been established, it remains until the conditions necessary for a change of domicile occur." *Id.* "To effect a change of domicile, there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely." *Croop v. Walton*, 157 N.E. 275, 278 (Ind. 1927).

In *State Election Board v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court considered the standard by which a "domicile" is established. The court determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. Specifically, the court stated, in relevant part, that:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and . . . he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile." A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence. *Id.* 1317 (Internal citations omitted).

The supreme court concluded that:

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." A self-serving statement of intent is not sufficient to find that a new residence has been established. Intent and conduct must converge to establish a new domicile. *Id.* at 1318 (Internal citations omitted).

In an earlier case, the Indiana Supreme Court stated that in order to establish a new residence, a taxpayer "must show . . . evidence of acts undertaken in furtherance of the requisite intent, which make that intent manifest and believable." In the *Matter of Evrard*, 333 N.E.2d 765, 768 (Ind. 1975).

The Department's regulation provides that "[t]here is no one set of standards that will accurately indicate the person's intent in every relocation." [45 IAC 3.1-1-22](#). Instead, the determination is made on a case by case basis. *Id.* Facts to be considered include:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or complying with the homestead laws of a state
- (5) Receiving public assistance
- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile. *Id.*

In addition, courts have considered a taxpayer's contemporaneous declarations identifying that taxpayer's "home;" insurance policies, mortgages, contracts or other instruments indicating the taxpayer's home; and membership in clubs, churches, or other social groups in a place. *Croop*, 157 N.E. at 278-79. Finally, courts have considered the location of taxpayer's household goods and mailing address. *Board of Medical Registration and Examination v.*

Turner, 168 N.E.2d 193, 197 (Ind. 1960); See also Culbertson v. Bd. Of Comm'rs of Floyd County, 52 Ind. 361 (1876). However, a taxpayer "seeking to establish his claim of exemption from taxation on the ground of nonresidence is not required to show that his property was assessed elsewhere." Croop, 157 N.E. at 276.

Taxpayer maintains he is a resident of Florida and has been a resident in that state since 2009. As a basis for his position, Taxpayer explains that he purchased a Florida house in 2009 and claimed the homestead credit on his property tax bill on the Florida home.

In addition, Taxpayer provided a copy of his Florida driver's license, transferred registration of his cars to Florida, and purchased car insurance from a Florida insurance company.

Further, Taxpayer registered to vote in Florida elections in 2009, joined two Florida social organizations that same year, and listed Florida as his residence on his federal income tax returns.

Pursuant to IC § 6-3-1-12(b), "The term 'resident' includes . . . any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state" Taxpayer owns an Indiana home and had an ongoing and extended presence in this state for more than 183 day during 2011. Therefore, Taxpayer is an Indiana resident for state tax purposes.

Taxpayer argues that his presence in Indiana was attributable to the fact that he was receiving medical treatment in Indiana during that time. As Taxpayer explains, "But for this time in Indiana for his [medical care], the Taxpayer was in Indiana less than 183 days during the Year in Issue." According to Taxpayer, "[T]raveling to Indiana for healthcare treatment is no indication of an individual's intent to reside in a particular location" but "is an indication . . . the Taxpayer is seeking out the best possible care for his medical issues."

Taxpayer has provided evidence that he set down roots in Florida. However, Taxpayer continues to maintain an active presence in Indiana including continued ownership of his Indiana home along with his ongoing and extended presence in this state more than 183 days during 2011. According to Taxpayer, his presence in this state is not by choice but by his wish to receive medical treatment at a facility he believes most competent to provide that medical care. However, Indiana's statute is not based on whether a person is present in this state by choice or by practical - and quite reasonable - necessity. In Taxpayer's case, the rule is clear; "The term 'resident' includes . . . any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state" IC § 6-3-1-12. Taxpayer retained ownership of an Indiana home and spent more than 183 days in this state during 2011.

FINDING

Taxpayer's protest is respectfully denied.

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